



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 66 of 2008

Reserved on: 18.07.2026

Date of Decision: 24.07.2026

Shamsher Singh & Ors. **...Appellants**

Versus

Chain Ram & Ors. **...Respondent**

Coram
Hon’ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?¹ Yes

For the Appellants : Mr Ajay Kumar, Senior Counsel with Mr Vinay Thakur, Advocate.
For respondents No.1, 2 and 6 : M/s Mohinder Verma & Sumit Sharma, Advocates.
None for respondents No. 3, 4(a) to 4(d).
Name of respondents No. 5 and 7 stands deleted.

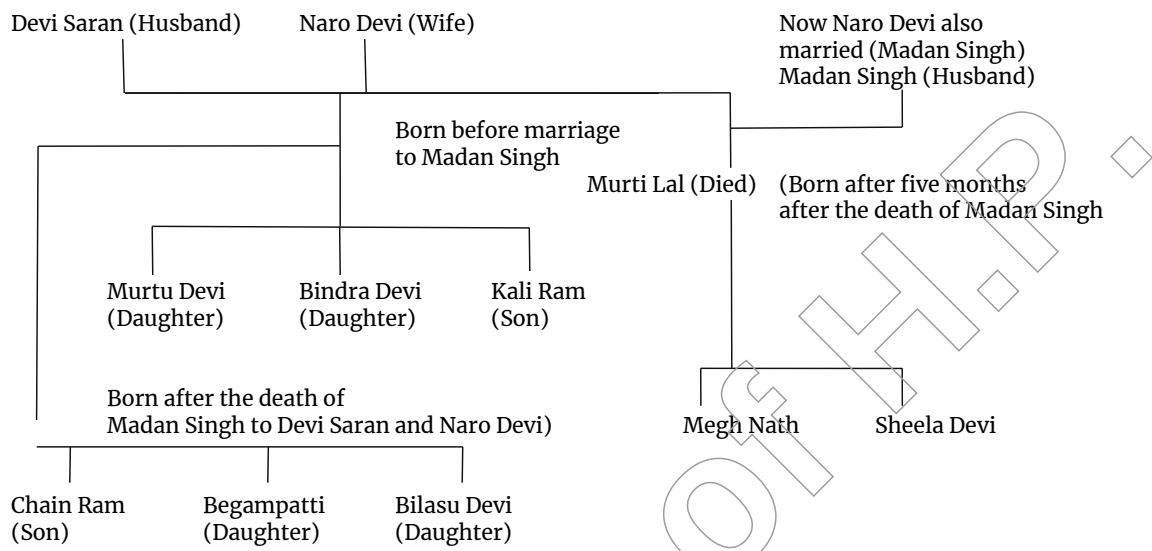
Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 17.08.2007 passed by the learned Additional District Judge, Shimla Camp at Rohru (learned Appellate Court)

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

vide which the judgment and decree dated 09.03.1992 passed by the learned Sub Judge-II Rohru, District Shimla, H.P. were upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court for seeking a relief of declaration that they are entitled to Madan Singh's share exclusively and $1/5^{\text{th}}$ share from the property of defendant no. 1, and the family arrangement is null and void. A consequential relief of permanent prohibitory injunction for restraining the defendant from interfering with the possession of the plaintiffs or alienating their share was also sought. It was pleaded that the suit land mentioned in the head note and para 1 of the plaint is the joint Hindu property of the plaintiff and defendants No.1 to 3. Bragi was the common ancestor of the parties. The relationship between the parties is as follows:



3. Smt. Naro Devi was the common wife of Devi Saran, defendant no. 1, and Madan Singh. Kali Ram, the father of the plaintiffs, was born to them. Madan Singh executed an izadinama in favour of defendant no. 1 regarding his property, and both of them became joint owners. Madan Singh died, leaving Kali Ram as the only heir. However, the mutation of inheritance was sanctioned in the name of Devi Saran, defendant no. 1. The plaintiffs are the sons of Kali Ram and are entitled to the whole share of Madan Singh through Kali Ram. Defendant nos. 2 & 3 were born to defendant no. 1 after the death of Madan Singh. The plaintiffs are entitled to an equal share with defendant no. 1. The plaintiffs were minors at the time of their father's death. Defendant no. 1, taking advantage of the minority of the plaintiffs, manipulated a family arrangement by giving

them some fields much less than their share. They approached defendant nos. 1 & 2 to provide their share, but in vain. Hence, the suit was filed for seeking the reliefs mentioned above.

4. The suit was opposed by filing a written statement taking preliminary objections regarding the lack of maintainability, the suit being bad for non-joinder of a necessary party, the suit having not been properly valued for court fees and jurisdiction, the plaintiffs being estopped from filing the suit by their act, conduct, deed, etc., and the suit being barred by limitation. It was asserted that the partition had taken place 18 years before filing the present suit. The plaintiffs' mother represented them and herself in the partition. She put the thumb impression on the partition list after being satisfied with the partition. The plaintiffs and their mother started residing separately after the partition. It was specifically denied that the suit land is ancestral joint Hindu family property of the parties. It was asserted that Naro Devi was married exclusively to Devi Saran, and that Madan Singh was made the joint husband of Naro Devi by defendant no. 1 with him. Kali Ram, Murtu Devi, Bindra Devi, and Murti Lal, defendant No. 2, were also born to Madan Singh and Naro Devi. The suit land was

partitioned with the consent of the parties, and the present suit is not maintainable. The mutation of inheritance was sanctioned in favour of defendant no. 1 as per the custom. Therefore, it was prayed that the present suit be dismissed.

5. A replication denying the contents of the written statement and affirming those of the plaint was filed.

6. The following issues were framed by the learned Trial Court on 06.08.1988, and one additional issue was framed on 9.10.1990:

1. Whether the suit is bad for non-joinder of necessary parties as alleged? OPD.
2. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPP.
3. Whether the plaintiffs are estopped from instituting the suit by their acts, conduct and deeds as alleged? OPD.
4. Whether the plaintiffs and their mother are living separately from the defendants by virtue of family partition between them and the suit in the present form is not maintainable as alleged? OPD.
5. Whether the suit is barred by limitation as alleged in preliminary objection. No. 6 of the written statement? OPD.
6. Whether the suit is bad for non-compliance of Section 80 CPC as alleged? OPD.
7. Whether the suit property is joint Hindu Family property of the parties as alleged? OPP.

8. Whether the family arrangements between the mother of the plaintiff and deceased defendant Devi Saran are illegal, void and inoperative as alleged? OPP.
9. If issue No. 7 is proved in the affirmative, to what extent the plaintiffs are entitled to the share in the joint property? OPP.
10. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP.
11. Whether the plaintiff is entitled to inherit the estate of deceased Madan Singh in its entirety and 1/5th share of deceased Devi Saran as alleged? OPP.
12. Relief.

7. The parties were called upon to produce the evidence and the plaintiff examined Gulab Singh, plaintiff No.2 (PW1), Hazaar Mani (PW2), and Lakshman Singh (PW3). The defendants examined Chain Ram, defendant No. 3 (DW1), Kunji Ram (DW2), Sarjan Dass (DW3) and Murtu Devi (DW4).

8. The learned Trial Court held that it was undisputed that Devi Saran and Madan Singh had executed an izadinama in favour of each other and reported this fact to the Revenue Officer. They became the joint owners after the execution of the izadinama. They had a common wife, Naro Devi. A partition had taken place between the parties in which Hazar Mani, the plaintiffs' mother, had represented them. The plea taken by the plaintiffs that the partition was fraudulent was not sufficient to

invalidate it. The plaintiffs had not filed the suit within the limitation. The suit was bad qua Naib Tehsildar for non-compliance of notice under Section 80 of CPC, but it was valid qua the private defendants. A joint property devolves by means of survivorship, and the suit land was rightly inherited by Devi Saran after Madan Singh's death. Hence, the learned Trial Court answered issue Nos. 2 to 5 in the affirmative, the rest of the issues in negative and dismissed the suit filed by the plaintiffs.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiffs filed an appeal which was decided by the learned Additional District Judge, Shimla, H.P. The learned Additional District Judge held that the learned Trial Court had not framed proper issues and the following issues were also required to be framed:

1. Whether at the time of death of Sh. Madan Singh only Kali Ram was born to Smt. Naro, as alleged? OPP.
2. Whether at the time of death of deceased Sh. Madan Singh, the two daughters namely Murtu and Bindra, were also born to Smt. Naro and the son Murti Lal was in her womb as alleged? OPD.
3. Whether the parties in the matter of inheritance of the property, only death of either of the partner- husband of a common wife are governed by any custom, if so, to what effect? OPD.

10. The findings were recorded on some facts, and the matter was remitted to the learned Trial Court for a fresh decision.

11. Being aggrieved by the judgment passed by the learned Additional District Judge, the defendant no. 1 filed an appeal before this Court, which was registered as FAO No. 20 of 1998. This Court held that the learned Additional District Judge should not have remanded the matter to the learned Trial Court, but should have sought the finding on the freshly framed issues. The findings were also not required to be given on the facts. Hence, the matter was again remitted to the learned Appellate Court.

12. Learned Trial Court recorded the statement of Gulab Singh and held that Naro Devi was the common wife of Devi Saran and Madan Singh. Murti Lal was in the womb of Naro Devi at the time of the death of Madan Singh. Two daughters, Murtu Devi and Bindra Devi, were also born to Naro Devi. The mutation of inheritance of the common property is attested in the name of the surviving husband in case of joint marriage. The parties are governed by the Hindu Law and not by custom. Hence, the

learned Trial Court answered issue no. 2 in the affirmative and the rest of the issues in the negative.

13. Learned Appellate Court held that Kali Ram was born to Naro Devi from her joint husband Madan Singh and Devi Saran. He died in the year 1992 (Vikrami), which corresponds to 1935 of the English calendar. The mutation of inheritance of the common property is attested in favour of the surviving husband, and Devi Saran had rightly succeeded to the estate of Madan Singh. Kali Ram had not challenged the mutation during his lifetime. The plaintiffs had not challenged the partition with limitation. Therefore, the appeal was dismissed.

14. Being aggrieved by the judgments and decrees passed by the learned Courts below, the plaintiffs have filed the present appeal which was admitted on the following substantial questions of law on 14.09.2009:

1. Whether the findings of the Ld. First Appellate Court and the Ld. Trial Court are a result of complete misreading of pleadings, evidence and the law as applicable to the facts of the case and particularly document Ext.PW3/A, Ext. DW1/A and Ext. DW2/A and as such palpably erroneous and illegal and if so to what effect?
2. Whether in the facts and circumstances of the case and in the face of the pleadings of the parties and the evidence

led by the parties, were the appellants not entitled to 1/5th share in the suit property?

3. What is the custom or rule of succession in case of children of polyandrous marriage?
4. Whether a one-sided, unfair and unconscionable partition forged on the minors through their illiterate and rustic mother is binding on the minors?
5. Whether the First Appellate Court failed to formulate proper points for determination, which has affected its judgment and resulted in miscarriage of justice to appellants.
6. Whether both the Courts below have grossly misinterpreted and mis-appreciated the evidence and the law as applicable to the facts of the case and if so to what effect?

15. I have heard Mr Ajay Kumar, learned Senior Counsel assisted by Mr Vinay Kumar, learned counsel for the appellants and M/s Mohinder Verma and Sumit Sharma, learned counsel for respondents No.1, 2 and 6/defendants.

16. Mr Ajay Kumar, learned Senior Counsel for the appellants submitted that learned Courts below failed to appreciate that the plaintiffs' mother could not have represented them during the partition, and unilateral partition effected by defendant No. 1 will not bind the plaintiffs. The partition could have been reopened by the minors on attaining the majority. Learned Courts below erred in holding that the suit was barred by limitation. Therefore, he prayed that the present

appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside.

17. Mr Mohinder Verma, learned counsel for respondent nos. 1, 2 and 6, submitted that the learned Courts below had rightly held that the suit was barred by limitation. The plaintiffs were required to file a suit within 3 years of attaining the majority to get rid of the partition. However, they failed to do so. The learned Appellate Court had rightly held that the property was rightly inherited by defendant no. 1 and the plaintiffs had no right over it. The parties had acted upon the partition and the partition had attained finality. Therefore, he prayed that the present appeal be dismissed. He relied upon the following judgments in support of his submission: -

- (i) *Chhotelal Babulal & anr. Vs. Premlal Girdharilal and other* AIR 1977 Madhya Pradesh 34;
- (ii) *Rangammal Vs. Kuppuswami & anr.* (2011) 12 SCC 220;
- (iii) *C. Doddanarayana Reddy (dead) through LRs Vs. C. Jayarama Reddy (dead) through LRs* (2020) 4 SCC 659;
- (iv) *T. Ramalingeswara Rao (dead) through LRs Vs. N. Madhava Rao & ors.* (2019) 4 SCC 608;
- (v) *Uppala Sambasiva Rao Vs. Uppala Kanakamma & ors.* AIR 1960 AP 213;
- (vi) *Abnashi Singh and ors. Vs. Smt. Lajwant Kaur & anr.* AIR 1977 P&H 1;

- (vii) *S. Subramanian Vs. S. Ramasamy & ors.* (2019) 6 SCC 46;
- (viii) *Anathula Sudhakar Vs. P. Buchi Reddy (dead) through LRs* (2008) 4 SCC 594;
- (ix) *Balwant Vithal Kadam Vs. Sunil Baburaoi Kadam* (2018) 2 SCC 82;
- (x) *Karunanidhi Vs. Seetharama Naidu & ors.* (2017) 5 SCC 483;

18. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No. 3:

19. It is undisputed that Madan Singh had died in the year 1992 Vikrami Samvat, which corresponds to the year 1935 of the English calendar. The learned Appellate Court had rightly held that the provisions of the Hindu Succession Act had not come into force at that time. The learned Appellate Court held that either the case would be governed by customary law or by traditional Hindu law and dealt with both the possibilities. The learned Trial Court, while recording the findings on the additional issues, held that the matter would be governed by traditional Hindu law.

20. *Punjab State Gazetteers Volume VIII Shimla Hill States Civil and Military Gazetteer Press Lahore 1910* describes polyandry

in Shimla Hills. It mentions at page 15 that polyandry prevails in the greater part of Kanawar and in some places in Rohru Tehsil and describes the polyandry and its various features as under:

Polyandry prevails in the greater part of Kanawar and in some places in Rohru Tehsil. There are two forms: (1) the higher, where the joint husbands are brothers, and (2) the lower, where they are not brothers. As a rule, the former alone is found in Bashahr, but there are instances of the second. Occasionally two men, perhaps of different castes, and certainly not relations, will become *dharm bhais*, and share a wife, but in such cases the offspring is not admitted into the brotherhood of his father. Cousins sometimes have a joint wife. Half-brothers often do. But generally speaking, the practice is for the joint wife to be shared by uterine brothers up to the number of six. If there are more than six brothers, they get two wives.

21. It further deals with the division of property amongst the polyandric group following the rule of *jathong* and *kalchlonwg* as under:

Division of property among a polyandric group follows the rule of *jathong* and *kalchlonwg*, which is applied throughout the hills to inheritance and partition. *Jathong* means the right of the elder and *kanchhonwg* the right of the youngest. Before the partition takes place, a good field is given to the eldest brother and the ancestral house to the younger. The rest of the property is then divided in equal shares. The custom is probably attributable to an idea that the youngest son is too young to find a new home for himself, and that the eldest son is entitled to some recognition of his seniority.

22. A book titled *Polyandry in Himalayas*, written by Dr YS Parmar, Vikas Publications 1975, deals with polyandry. It discusses the prevalence of polyandry in the greater part of Kanawar and some places in Rohru of Bashahr at page 81 as under:

We find polyandry prevailing in the greater part of Kanawar and in some places in Rohru of Bashahr. In Bashahr it is found existing in both forms, higher and lower (fraternal and non-fraternal). In the higher form the joint husbands are brothers, and in the lower they are not so. Usually, the former only is found in Bashahr, but there are scattered instances of the latter too. What happens in the latter type is that at times strangers of even different castes become *dharam* bhaïs (brothers not by blood but by performing a ceremony by which they become like brothers) and share a wife, but in such cases the offspring is not admitted into the brotherhood of his father. It should be noted that, though the husbands are not brothers, the fraternal tie is not lost sight of and strangers can have a joint wife only when they have adopted the fraternal spirit. A *dharam* bhai is for all practical purposes considered as a brother except in the matter of inheritance. Thus the lower form, which is supposed to allow strangers to share a wife in common, is brought within the framework of the higher form and the fraternal idea is clearly discernible in it. Cousins and half-brothers sometimes have a joint wife. The fraternal tie is thus the basis of the practice allowing them to share a joint wife, for as members of one caste, tribe or family, they, as possible heirs, represent the fraternal group. As a matter of general practice, however, a joint wife is shared by uterine brothers up to the number of six. If, however, there are more than six brothers, they get two wives.

Quite a number of women have two husbands, and some have three or four or even five.

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At times one of the several brothers sharing a common wife brings a separate wife for himself. If the new wife agrees to be shared by all the brothers, no difficulty arises. If, however, she refuses to be the common wife of all the brothers, the joint property has to be partitioned. She and her husband have to separate and start a new establishment. Her husband does not, however, lose his right in the joint property, but as a general rule she severs her connection with him. The partition of property is made in accordance with customary rules of inheritance which will be described later.

23. It deals with the partition and the succession of the property at page 143 and 158 as under:

How far the desire to keep an estate undivided after the death of an owner was responsible for it can be best judged from the case of Bashahr state where the administration actively encouraged it and imposed penalty on partitions. No better proof could be afforded of the influence of this factor. That was also most probably the reason why the Jathong and Kanchong systems of inheritance prevailed in these polyandrous tracts. Surprising as it may appear, the customs bore the same names in Bashahr, Sirmur, and other polyandrous parts of the hills. "Jathong" from "jetha" or elder means the right of the elder, and "kanchong" from "kancha" or youngest means the right of the youngest brother. Since partitions were to be discouraged, a check was placed by society on them by enforcing the rights of the eldest and youngest brothers. If a partition has to take place, a good field has to be given to the eldest brother according to jathong and the ancestral house has to be given to the youngest brother according to kanchong. The customs seem to imply the assumptions that the youngest brother

is too young to find a new home for himself and the eldest is entitled to some recognition of his seniority. But while these assumptions may be far, what is more likely is that, in addition to these, or probably as the origin of these, was the desire to levy some conditions which, though not obnoxious to the members of the family, might work as a suitable check on the desire to have partitions effected. After keeping apart a good field for the eldest and the ancestral house for the youngest, the rest of the property had to be divided equally among all the brothers. Thus, in a family of six brothers, in case of partition, the eldest would get one good extra field and the youngest the ancestral house and the rest of the property would be equally divided among them all. While the eldest and the youngest are gainers, the other four brothers are the losers. They lose one good field and, what is more, the ancestral house. They must make one or more houses for themselves and spend their time, energy, and money on them, while they gain nothing by partition. It would therefore be to their interest not to burden themselves with this extra expenditure but to get what benefits they could from the family property as such. While, therefore, the eldest and the youngest may desire a partition, the majority of brothers would be against it and would try all they could to avoid it. Thus, while in an ordinary joint Hindu family all the brothers get equal shares in the family property, the polyandrous people of the hills laid these two conditions on the members of a family so that in case of partition the interests of the majority of brothers are generally against partition. Thus, in an indirect but effective manner, the desire to transmit an estate undivided was secured though apparently jathong and kanchong only safeguarded the interests of the eldest and the youngest brothers. Apart from these considerations, the question of the allotment of the wife would prove a serious problem.

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A study of kinship terms and usages may also be of help to us in considering the matter of inheritance and succession. We have seen that polygyny and polyandry are both practised side by side in these hills. The existence of these practices at the same time moulds the laws of inheritance in a peculiar but interesting manner. *Ordinarily the courts of law follow the Benares School of Mitakshara law as far as inheritance and succession are concerned, but the local customs hold their own, and in case of any difference the local custom is a decisive factor.* Succession does not, as it does in other parts of India, offer any great intricacies here. The simple life of the inhabitants has developed a system of succession suitable to their local needs. None of the complexities and subtleties of the Hindu succession is present, and few persons have to approach the courts in this connection. The problems of partition and inheritance of the joint family property are scarcely present. The reason for their absence is the simple fact that the family is for all practical purposes one solid unit and is hardly ever divisible, especially as far as a polyandrous family is concerned. (Emphasis supplied)

A number of brothers marry one joint wife. The offspring by the common wife are the sons or daughters of the family. *In a polyandrous family, on the death of a brother, his sons do not inherit his property if his other brothers are living. A brother succeeds a brother, and only when all the brothers are dead do their children inherit the property.* Since the sons in a polyandrous family are considered to be the offspring of all the fathers, they cannot become fatherless till all the brothers are dead. The sons have in turn to remain joint and to get a joint wife not only for social reasons but also for economic necessity. These factors do not afford the members of the family any opportunity or inducement for a division of the property or for separation.....(Emphasis supplied)

In the case of a polyandrous family, all the sons succeed the father but remain joint. *If one of the brothers dies, his sons and widow do not succeed him, but he is succeeded by his younger brother or brothers.* Only when all the brothers are dead do their sons inherit the property. All the sons now have a joint interest and ownership and, if they want to separate, the eldest and youngest brothers have to be given separate extra shares in accordance with the rule of jathong and kanchong. (Emphasis supplied)

24. This book was cited with approval by this Court while dealing with the custom of polyandry in *Pratap Singh v. Guman Singh*, 2010 SCC OnLine HP 114. It was observed:

According to Dr Y.S. Parmar (former Chief Minister of Himachal Pradesh) in his treatise "Polyandry in the Himalayas", where the system of Joridari was followed, the local customs governed the field and the ordinary Mitakshara School of Law did not govern inheritance or succession between the parties. When a number of brothers joined together to have one or more wives, the offspring of the common wife or wives were treated as the sons or daughters of the family. The property was inherited only by the eldest brother. On his death, the property was not inherited by the children but by the next eldest brother. It was only after all the brothers expired that the eldest male child would inherit the property.

There were economic reasons behind these customs. The holdings in the hills were small. Therefore, to prevent fragmentation of holdings, this custom was followed. The result of this custom was that even the sons would normally remain joint and get a joint wife, leaving no inducement for separation or partition of the property. In a family where the practice of polygamy was being followed, all the male issues inherited their father's property. The property on the death of the father passed on to them. The sons of any particular wife did not get

any preference. The property was divided per capita and not per stirpes. In the case of a family where polyandry was being followed, it was the brother who inherited the property as long as the partition was not made. However, the Rules of Succession in respect of the system of Joridari, where the Joridari breaks-up are not very clear. When the Joridari would break up, if the number of wives were equal to the number of brothers, then each brother would take one wife, but where the number of wives was less, then the wives would be divided within groups of brothers. Under the system where polyandry or the system of Joridari was followed, normally the children were treated as the children of the eldest brother.

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As far as the first question is concerned, I am of the considered view that the concept of coparcenership did not at all exist in the Joridari system where a mixed system of polygamy and polyandry was followed. Reference may be made to the origin of the system of Joridari from the book "Polyandry in the Himalayas" wherein at page 152 the learned author Dr. Y.S. Parmar, observed as follows:-

"In this region, due to economic and sociological reasons, a man cannot always afford to maintain a separate wife for himself, and so two or more husbands keep a joint wife and the children born of such union are the property of all the husbands and they all call them fathers. The children live with them and rarely separate even when grown up. Thus the husband or husbands, wife or wives and the children constitute a unit of the community. If a family consisting of four husbands, a wife, and two children feels at any time the necessity of another helping hand, the husbands may marry another woman and the additional wife would be submerged in the family and become a part of it without in any way disturbing its solidarity."

It would be relevant to refer to the study of kinship terms and uses as observed by the learned author at page 158, relevant portion of which reads as follows: -

“A study of kinship terms and usages may also be of help in considering the matter of inheritance and succession. We have seen that polygyny and polyandry are both practised side by side in these hills. The existence of these practices at the same time moulds the laws of inheritance in a peculiar but interesting manner. Ordinarily, the Courts of law follow the Benares School of Mitakshara law as far as inheritance and succession are concerned, but the local customs hold their own, and in case of any difference the local custom is a decisive factor. Succession does not, as it does in other parts of India, offer any great intricacies here. The simple life of the inhabitants has developed a system of succession suitable to their local needs. None of the complexities and subtleties of the Hindu succession is present, and few persons have to approach the Courts in this connection. The problems of partition and inheritance of the joint family property are scarcely present. The reason for their absence is the simple fact that the family is for all practical purposes one solid unit and is hardly ever divisible, especially as far as a polyandrous family is concerned. A number of brothers marry one joint wife. The offspring by the common wife are the sons or daughters of the family. In a polyandrous family, on the death of a brother, his sons do not inherit his property if his other brothers are living. A brother succeeds a brother, and only when all the brothers are dead do their children inherit the property. Since the sons in a polyandrous family are considered to be the offspring of all the fathers, they cannot become fatherless till all the brothers are dead. The sons have in turn to remain joint and to get a joint wife not only for social reasons but

also for economic necessity. These factors do not afford the members of the family any opportunity or inducement for a division of the property or for separation. Even in families which practice polygyny, succession does not produce any complications. All the male issues of the wives are heirs to their father's property. The property on the death of the father at once passes on to the male issue. It is divided equally among them. The sons of any particular wife do not get any extra share. If, however, a man dies without any male issue, property is equally divided amongst his wives who have only a life interest in the property. The widows do not have the authority to dispose of the immovable property by will, gift or sale. On their death, it will pass on to the nearest collaterals."

25. It was further held that a brother inherits from the brother, the sons have no right to inherit the property till the earlier generation is alive and the concept of coparcenarship cannot be followed. It was observed:

"It is obvious that when a brother inherits from a brother and when the sons have not even a right to inherit the property till the earlier generation is alive, the concept of coparcenership cannot be introduced. The system of Joridari is totally alien to the concept of coparcenership. True it may be that the eldest brother or eldest member of the Joridari held the property in trust for all the members of the Joridari, but this did not mean that any coparcenary existed. Dr Parmar has clearly stated that the Mitakshara School of law was not applicable. The Joridari system is unique. This system does not even remotely find mention in any of the Hindu Schools of law. One must remember that it was not necessary that all brothers should constitute one Joridari. As is apparent from the facts of this case itself, out of five brothers, two brothers

constituted one Joridari and three brothers constituted a separate Joridari. Their offspring were different. The offspring of one Joridari system definitely cannot claim any right in the property of the other Joridari. Therefore, this also negates the very concept of coparcenarship which gives a male child right of inheritance in the ancestral property even when he is in the womb. Therefore, the first question is answered by holding that the concept of coparcenership did not apply to the Joridari system.

26. In the present case, it is undisputed that Naro Devi was a common wife of Madan Singh and Devi Saran. The property was jointly owned by both of them. Hence, the principle of traditional Hindu law of coparcenarship will not apply to the present case. The property would be inherited by Devi Saran after the death of Madan Singh as per the customary law noticed above. This was also recognised by the revenue authorities who attested the mutation in favour of defendant no. 1 Devi Saran on the death of Madan Singh.

27. The plaintiffs also asserted this fact in para 5 of their plaint as under:

“That after executing the mutation of ijadinama Madan Singh died leaving behind the only son deceased Kali Ram, the father of the plaintiffs but due to the joint marriage the mutation of inheritance of the deceased Madan Singh was attested in the name of defendant no. 1 Devi Saran...”

28. The defendants had also set up this custom in para 5 of their written statement as under:

“ It is admitted that on the death of Madan Singh, the mutation of inheritance of the estate of Madan Singh was attested in the name of defendant No.1 on account of joint marriage. This was done in accordance with the custom of the area...”

29. Learned Appellate Court had noticed the pleadings of the parties and concluded that the inheritance was to be governed by way of a custom. The mutation was rightly attested in favour of Devi Saran, and the plaintiffs cannot make any grievance regarding the attestation of mutation in favour of defendant no. 1. This was as per the customs noticed above.

30. Therefore, the Rule of succession in case of polyandrous marriages is that the property is inherited by the surviving brother(s) and not by the children. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law Nos. 1, 2, 4, 5 & 6:

31. The plaintiffs filed a civil suit on the premise that the matter is governed by traditional Hindu/Mitakshara Law. However, this is not correct. The matter is governed by Customary Law under which the surviving brother inherits the

property. Therefore, the plaintiffs cannot claim any right in the property of their father till the death of all the brothers of the co-marriage. Hence, the suit filed by the plaintiffs during the lifetime of Devi Saran, brother of Madan Singh, claiming that they had a right in the suit land and the partition adversely affected them, was without any basis. Therefore, all these substantial questions of law do not arise in the present case.

Final Order:

32. In view of the above, the present appeal fails and is dismissed.

33. The appeal stands disposed of, so also the pending application(s), if any.

34. Records of the learned Courts below be returned forthwith.

(Rakesh Kainthla)
Judge

24th July, 2026
(Nikita)